IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15628 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHIVANGI INDUSTRIES THRO.PROPRIETOR

Versus

STATE BANK OF INDIA

Appearance:

1. Special Civil Application No. 15628 of 2004

MR S.N.SOPARKAR WITH MR MB GANDHI AND
MR SP MAJMUDAR for Petitioner No. 1
M/S TRIVEDI & GUPTA for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 05/05/2005

ORAL JUDGEMENT

Rule. Shri Gupta, the learned AGP waives service of Rule on behalf of the respondent Bank.

With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

.RS 2.

#. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, order of directions directing the respondent bank to pay amount mentioned at Annexure-J to the petition to the tune of Rupees Twenty Six Crores Eighty Three Lakhs Sixty Eight Thousand only to the petitioner forthwith.

#. It is the case of the petitioner that the petitioner is running the proprietorship concern in the name of Shivangi Industries and had open the current account with the respondent State Bank of India with the mandate that the account will be opened by the proprietor singly. It is also case of the petitioner that as the petitioner was mainly stationed at Bharuch for his business activities, it was not feasible on his part to come to Ahmedabad frequently for various business transactions. It is the case of the petitioner that in the year 2000, the petitioner has some doubt regarding some transactions in his account and therefore, the petitioner took up the matter with the respondent bank and asked for certain documents which were not supplied by the respondent Bank. It is the case of the petitioner that the respondent bank did not do anything and therefore, the petitioner lodged a criminal complaint / FIR with Bharuch Police Station being C.R.No.I-154 of 2001 and the said complaint was filed against the private persons. However, subsequently during investigation, police found some officers of the Bank are also involved in the conspiracy and irregularity, the bank Officials were also joined as the accused in the said complaint and were also arrested by the Bharuch Police. It is the case of the petitioner that the respondent bank conducted the inquiry into irregularities in the conduct of the current account of the petitioner at Rakhial Branch at Ahmedabad and vide report dated 5.12.2001 the Bank came to the conclusion that there were serious irregularities in handling the said current account of the petitioner. It is also case of the petitioner that said report interalia states that appropriate remedial actions on an urgent basis should be taken for mishandling of current account of Shivangi Industries apart from fixing the staff accountability for various lapses. It is also submitted that the following irregularities and / or deficiencies in the conduct of the current account of the petitioner have been noticed.

[i] The account of Shivangi Industries was allowed to be operated by one Shri Shashikant Shah, Proprietor of Paras Founder and Engineering without any authority in writing.

[ii] The cheques drawn on the account for large amounts were paid in cash to a person not connected with to Shivangi Industries.

[iii] In case of one cheque for Rs.25,575/- dated 25.4.1995, it does not bear the signature of the passing officials.

[iv] In some cases, cheques have been drawn by the Proprietor of the firm while in some other cases, cheques have been drawn by some partner, in fact, there has nothing been on record to indicate that the Constitution of the firm has change.

[v] In some case, when the Ten cheques books were issued on the same day to third parties the consent of the account holder was not taken."

It is further submitted that during 1995 to 1997, 334 cheques were issued of Shivangi Industries without proper verification and it is the case of the petitioner that report of handwriting expert reveals that signature on the cheques did not tally with the signature of proprietor. It is therefore submitted that it is proved prima facie that fraud and irregularity were committed by the Bank Officials in connivance of outsiders and hence, the petitioner was required to be compensated for the loss occasioned to him owing to the negligence irregularity and / or fraud cone by the bank officials and therefoer, the petitioner has made representation on 6.5.2004 pointing out the guidelines of Reserve Bank of India to the effect that if there is prima facie evidence of negligence, irregularity and fraud with outsiders on the part of the bank, it should compensate the account holder immediately. It is further submitted that in the mean time, the said dispute was also referred to the Banking Ombudsman vide Complaint No. 257 of 2003-04 and the Ombudsman vide order dated 2.8.2004 came to the conclusion that the bank should inquire into the matter and should compensate the petitioner immediately if prima facie there is evidence of negligence irregularity and fraud on the part of the respondent bank. It is therefore submitted that inspite of the aforesaid facts and circumstances, when the petitioner is not compensated, the petitioner has preferred the special civil application for the aforesaid prayers.

#. Shri S.N.Soparkar, the learned Senior Advocate appearing on behalf of the petitioner has submitted that atleast the petitioner should be compensated for the amount which is paid by the bank on the basis of the cheques as if the same are issued by the partnership firm though the account in question was a proprietorship's account and not the partnership firm's account and therefore, under the undisputed facts, atleast the petitioner should be compensated for the said amount which comes to approximately Rs.1.00 crore. It is also further submitted that looking to the other disputed facts, the petitioner at present restricts his claim with regard to the payment made by the cheques as if the cheques are issued by the partnership firm. It is also further submitted that inspite of the order passed by the Ombudsman dated 2.8.2004, no inquiry has been initiated by the bank and therefore, it is requested to direct the respondent No.1 - Bank to initiate and complete the inquiry as per the order passed by the Ombudsman dated 2.8.2004.

#. In response to the notice issued by this Court, M/s Trivedi and Gupta appears on behalf of the respondent Bank. Affidavit-in-reply is also filed on behalf of the respondent No.1 bank. It is submitted in the affidavit-in-reply that in fact, the petition raised disputed questions of facts and initially, the petitioner made main grievance with regard to the alleged criminal breach of trust and fraud committed by one Shri Shashikant Khemchand Shah, Proprietor of Paras Founders and Engineers of Rakhial in conspiracy with (ii) Smt.Pallavi Shashikant Shah (iii) Shri Kriit R. Shah, (iv) Shri Umesh B. Shah, (v) Shri Vipul B. Shah and (iv) Shri Anil Joshi all of Ahmedabad against whom the petitioner has already lodged a Criminal Complaint being C.R.No.I-154 / 2001 under Section 420, 406, 34, 466 and 468 of the Indian Penal Code at Bharuch Police Station on 7.9.2001 and the same is being investigated by the police. It is further submitted that it is the petitioner who has stated in the complaint that he had decided to enter into a contract with the accused Shri Shashikant Shah whereby the petitioner authorised the accused to operate the current account of the petitioner and to carry on all the transactions relating to the petitioner's business at Rakhial. It is also submitted that in fact, the petitioner himself is the beneficiary of some of the amount which is withdrawn by the aforesaid cheques from the aforesaid current account and therefore, it might be that the petitioner is also one of members of conspiracy hatched and hence, all these transactions are

required to be investigated and inquired into and the in fact, the police is investigating the same and therefore, unless and until the investigation is over as well as considering the conduct of the petitioner and the alleged role of the petitioner, prima facie, it appears that the petitioner is also member of the conspiracy, the petitioner is not entitled to any amount and is not at all entitled. It is also further submitted by way of additional affidavit-in-reply that subsequently the very petitioner has entered into a settlement with the original accused Shri Shashikant Shah and others, by which, the petitioner has agreed to take approximately an amount of Rs.1.00 crore by way of full and final settlement and in fact two co-accused filed an application for quashing of the complaint on the ground that the matter is settled with the petitioner and has accordingly got even the said complaint quashed in which the petitioner was also the party. It is further submitted in the Further Affidavit-in-Reply that even Criminal Misc. Application is also filed under Section 482 of Cr.P.C. before this Court by the main accused Shri Shashikant Khemchand Shah for quashing the complaint on the ground that there is settlement between the accused and the petitioner and even settlement is also produced before this Court in aforesaid Criminal Misc. Application No.2580 of 2005. Therefore, it is submitted that now when the petitioner has entered into a settlement with the accused against whom allegations are made with regard to cheating, criminal breach of trust, conspiracy etc. and the petitioner would be beneficiary of the said amount, and therefore, the present special civil application is required to be dismissed. It is also further submitted that in fact, in the present special civil application and/or even in the rejoinder, the petitioner has not submitted anything with regard to settlement entered into with the some of the co-accused, more particularly, against the main accused Shri Shashikant Shah and therefore, requested to dismiss the present special civil application.

#. So far as the prayer to hold inquiry as per the order passed by the Ombudsman is concerned, initially it was submitted by Shri Gupta, the learned advocate that the report of Ombudsman is not accepted by the respondent as there is no question of holding any inquiry by the bank. However, subsequently it is submitted that if any appropriate direction is issued to complete the inquiry within reasonable time as per the order passed by the Ombudsman, in that case, the respondent Bank will not have any objection.

#. Heard the learned advocates appearing on behalf of the respective parties.

#. From the averments made in the petition, affidavit-in-reply, affidavit-in-rejoinder and further affidavit-in-reply, it, prima facie, appears that there are disputed question of fact and it is not possible to arrive at a definite conclusion at this stage on the issue whether the petitioner is entitled to be compensated. It is pertinent to note that investigation and inquiry with regard to alleged negligence, criminal breach of trust, conspiracy, cheating etc. is pending with the police authority. From the pleadings it appears that it is allegation raised on behalf of the State Bank of India that in fact, so far as some of the cheques are concerned, the petitioner is the beneficiary of the amount which is withdrawn from the aforesaid current account and therefore, the petitioner might be one of the members of the conspiracy. The aforesaid apprehension now seems to have some basis and/or substance in view of the fact that now the petitioner himself has settled the accounts with the some of the accused of criminal complaint i.e. C.R.No.I-154 / 2001 and also with the main accused Shri Shashikant Shah and by which the petitioner is likely to get approximately an amount of Rs.1.00 crore from them. Not only that but even the complaint against two co-accused are already got quashed by filing Criminal Misc. Applications in which the petitioner was the party. The fact that cannot be ignored that in Criminal Misc. Application filed under Section 482 of Cr.P.C. filed by the main accused Shri Shashikant Shah for quashing by submitting that the dispute is settled with the petitioner and that a settlement is also produced before this Court which is signed by the petitioner also. The act of settlement the dispute and accounts with the main accused is not disclosed by the petitioner either in main Special Civil Application and/or in the Rejoinder till additional reply was filed by the Bank. Thus, it appears that the petitioner has not stated correct facts before this Court and has tried to mislead this Court by way of suppressing the material fact. The aforesaid conduct on the part of the petitioner is also required to be considered/viewed very seriously. Initially, the petitioner represented with the bank that there was criminal breach of trust on the part bank and his authorised person Shri Shashikant Shah. After few days, he represented to the bank that there was some misunderstanding on his part and that there is no grievance against the said Shri Shashkinat Shah. Thereafter, after some time, he filed a complaint at Bharuch City "A" Division Police Station being

C.R.No.I-154 / 2001 against said Shri Shashikant Shah and others for the offence under Sections 406, 420 and 34 of the IPC. Thereafter, he approached the bank's Ombudsman and requested for compensation for the negligence and/or fraud committed by the Bank Officials and thereafter, he filed the present special civil application for compensation and/or recovering the said amount. It is pertinent to note that during pendency of the present special civil application, he entered into settlement with the main accused and other co-accused and has got the complaint quashed against two of the co-accused and Criminal Misc. Application under Section 482 of Cr.P.C. is also filed by the main accused Shri Shashikant Shah for quashing the complaint which is pending before this Court, in which, the settlement signed by the petitioner is produced. Considering the aforesaid conduct on the part of the petitioner and considering the apprehension on the part of the respondent bank that the petitioner might be one of the beneficiaries of the conspiracy, as according to the bank, he is the beneficiary for some amount which was withdrawn through some of the cheques from the aforesaid current account and that investigation and inquiry is pending. Therefore, during pendency of the aforesaid inquiry and investigation and the conduct of the petitioner, this Court is of the opinion that the petitioner is not entitled to any relief in the present special civil application for recovery of the amount as prayed for in terms of the para-7(b) and (c) i.e. amount mentioned at Annexure-(J) to the petition, much less, an amount approximately of Rs.1.00 crore as suggested by Shri S.N.Soparkar, the learned senior advocate appearing on behalf of the petitioner which was withdrawn by presenting the cheques as if the same were presented by the partnership firm though the current account was of proprietorship firm. Accordingly, the present special civil application for the aforesaid prayers requires to be dismissed and is accordingly dismissed.

#. So far as the prayer of the petitioner to direct the respondents to hold inquiry as per the order passed by the Bank's Ombudsman dated 2.8.2004 issued in complaint No.257 of 2003-04 is concerned, the bank's Ombudsman has issued the following directions / order:

"8. Order :

8.1 The complaint involving an alleged fraud and requiring detailed investigation by CBI/Police can not be fairly adjudicated under Banking Ombudsman Scheme, 2002.

8.2 However, since certain deficiencies in the operation of the account were evident, State Bank of India is advised to comply with the following in the interest of better customer service and confidence in the banking system in accordance with the RBI directives :

a) State Bank of India should conduct a full scale enquiry / investigation into the whole matter at their highest level in terms of their vigilance report of 5.12.2001 to find out if the customer had suffered loss due to alleged fraudulent operation of the current account.

b) In case, prima facie, it is established that a fraud has been committed and the complainant has suffered financial loss due to fault of the bank or a fraud, the bank should immediately acknowledge its liability towards the customer and pay the just claim in terms of RBI circular No.DBOD.Leg.BC.86/ 09.07.007/2001-02 dated 8/4/2002 after obtaining appropriate Indemnity Bond from the customer."

##. Though there is no prayer in the present special civil application, however, considering the fact that the allegations are against the bank officials also and the fact of siphoning of huge amount which aggregately comes to Rs.7.00 crores and the fraud is also alleged against the bank officials also as well as considering the fact that ultimately it is public amount which is involved and also with a view to see that truth may come out, the respondent Bank is directed to comply with the order passed by the Bank Ombudsman dated 2.8.2004 passed in aforesaid complaint No.257 of 2003-04 and complete the inquiry / investigation as directed by the Bank's Ombudsman as early as possible preferably within a period of six months from the date of receipt of copy of this order and take appropriate actions as per out come of the said inquiry and investigation.

##. With aforesaid observations and directions, the present special civil application is dismissed.

Rule is discharged with no order as to costs.

Date : 5.5.2005 [M.R.Shah, J.]

#kailash#